

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 23-5073-JFW(SKx)**

Date: September 27, 2023

Title: Sam Wenguer -v- John Doe

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

**ORDER TO SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION**

On June 26, 2023, Plaintiff Sam Wenguer ("Plaintiff") filed a Complaint in this Court against Defendant John Doe, d/b/a Thee Italian Stallion ("John Doe"), alleging that the Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1332(a). However, Plaintiff has not adequately alleged the facts essential for the subject matter jurisdiction of this Court. *Tosco Corp. v. Communities for a Better Environment*, 236 F.3d 495, 499 (9th Cir. 2001) (quoting *Smith v. McCullough*, 270 U.S. 456, 459 (1926)) ("A plaintiff suing in a federal court must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction . . .").

Diversity jurisdiction founded under 28 U.S.C. § 1332(a) requires that (1) all plaintiffs be of different citizenship than all defendants, and (2) the amount in controversy exceed \$75,000. See 28 U.S.C. § 1332(a). In this case, Plaintiff alleged in his Complaint that "Plaintiff will seek to amend this Complaint once he is able to subpoena information from eBay concerning the name and exact address of Defendant." Complaint, ¶ 3. However, Plaintiff has failed to amend the Complaint to name John Doe. In addition, Plaintiff alleges that Plaintiff "resides in Los Angeles, California" and that John Doe "is a resident of the State of West Virginia." Complaint, ¶¶ 2-3. With respect to a natural person, "the diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). To be a citizen of a state, a natural person must be a citizen of the United States and be domiciled in a particular state. *Id.* Persons are domiciled in the places they reside with the intent to remain or to which they intend to return. *Id.* "A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state." *Id.* Finally, Plaintiff alleges Defendant's residency on "information and belief." Complaint, ¶ 3. Jurisdictional allegations based on information and belief

are insufficient to confer jurisdiction. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual citizenship of the relevant parties.”); *America’s Best Inns, Inc.*, 980 F.2d at 1074 (holding that allegations based on “to the best of my knowledge and belief” are insufficient); see, also, *Bradford v. Mitchell Bros. Truck Lines*, 217 F.Supp. 525, 527 (N.D. Cal. 1963). Therefore, Plaintiff has failed to demonstrate that complete diversity exists.

Accordingly, Plaintiff is hereby ordered to show cause, in writing, no later than **October 4, 2023**, why this action should not be dismissed for lack of subject matter jurisdiction. No oral argument on this matter will be heard unless otherwise ordered by the Court. See Fed. R. Civ. P. 78; Local Rule 7-15. The Order will stand submitted upon the filing of the response to the Order to Show Cause. If Plaintiff files an amended complaint which corrects the jurisdictional defects noted above on or before **October 4, 2023**, the Court will consider that a satisfactory response to the Order to Show Cause. Failure to respond to the Order to Show Cause will result in the dismissal of this action for lack of subject matter jurisdiction.

IT IS SO ORDERED.